1949.

File No. Evacuees (Admn. of Prop.) II/49 (N)

Legal Deptt.

B **BRANCH**

P15E

Subject:— Notification issued under Bombay Evacuees (Administration of Property.) Act 1949

Evacuees (Admn. of Prop.) II/49 (N)

48

A rivised draft notification is appended.

2. The proposal to appoint the Custodian by name will lead to difficulties on the Officer ceasing to be the Deputy Secretary, in Rehabilitation Department. The revised draft therefore omits the name of Mr. Naik.

Sd./- J.R.D.
25/5
Additional Secretary to Government.

L.R. to Rehabilitation Department, No. 5771,
Dated the 23rd May 1949.

SVV
4.6.56.
4 c.

11/6

K.S.R.
11/6

NOTIFICATION
Rehabilitation Department,
Bombay Castle, May, 1949.

No. :- In exercise of the powers conferred by section 3 of the Bombay Evacuees (Administration of Property) Act, 1949 (Bom. XXIX of 1949) the Government of Bombay is pleased to appoint the Deputy Secretary to the Government of Bombay, Rehabilitation Department, to be the Custodian of Evacuee Property for the Province of Bombay.

By order of the Governor of Bombay,

Chief Secretary to Government.

SVV
4.6.56.
4 c.

Legal Department.

In the linked case placed below Government has passed an order recording its decision that Khan Bahadur Abdul Kadir Mahomed Hussain and his wife are evacuees for the purposes of the Bombay Evacuees (Administration of Property) Act, 1949. That decision may now be embodied in an order and a copy of the order duly authenticated as required by Rule 12 of the Rules of Business may be sent to the Solicitors. A draft of the necessary order is sent herewith.

Sd./- J.R.D.
4/6
Additional Secretary to Government.

U.R. to Rehabilitation Department, No. 347-Confl.,
dated the 6th June 1949.

SVV
4.6.56.
4 c.

Legal Department.

A revised draft notification is sentherewith.

Sd./- J.R.D.
21/6
Additional Secretary to Government.

U.R. to Rehabilitation Department, No. 6864;
dated the 21st June, 1949.

SVV
4.6.56.
4 c.

NOTIFICATION

Rehabilitation Department,

Bombay Castle, June, 1949.

Bombay Evacuees (Administration of Property) Act, 1949.

No. In exercise of the powers conferred by section 3 of the Bombay Evacuees (Administration of Property) Act, 1949 (Bom. XXIV of 1949), the Government of Bombay is pleased to appoint all Collectors to be Deputy Custodians of Evacuees Property and all Mamlatdars except the Mamlatdars in the Bombay Suburban District, to be Assistant Custodians of Evacuee Property, within their respective jurisdictions.

By order of the Governor of Bombay,

Secretary to Government.

SCV 2.6.56.
4 c.

Office of the R.L.A.

A copy of the will left by Mr. Jannah is not in the papers. If Miss Fatma Jinnah became the sole owner of the bungalow at Mount Pleasant Road after she had settled down in Pakistan, as appears to be the case, it cannot be said that she is an evacuee within the meaning of sub-clause (i) of clause (b). Sub-clause (ii) as now amended by the recent Ordinance reads as follows:

> "An 'evacuee' means a person resident in Pakista but owing property or carrying on business within the territories comprised in the Province of Bombay who, on account of civil disturbances or the fear of such disturbances, or the partition of the country or by reason of his residence in Pakistan cannot he does not personally occupy or supervise his property or carry on his business or watch his interests or enforce his rights within the Province."

Attention must specially be directed to the underlined words. The words "personally watching one's interests" have been defined in clause (4) of section 2 to mean wate inx his interests under one's personal presence or by agents or servants under one's personal presence mx in the Province. Miss Jinnah's case does not come within the Explanation. The events which led to the requisition of the property and the subsequent developments clearly show that Miss Jinnah cannot and does not watch her interests by her personal presence or through agents under her personal presence in the Province. We can, therefore, safely say that her case comes within sub-clause (ii) of clause (b) of section 2 of the Act as now amended by the Ordinance. In that view, Miss

SVV
4.6.56.
4 c.

Jinnah will become have to be treated as an evacuee and the property can be treated as evacuee property.

2. The requisitioning does not really conflict with the procedure laid down in the Act for dealing with evacuee property. Under section 4 of the Act the property will vest in the Custodian although it may have been requisitioned by Government; for requisitioning merely means taking possession and does not affect the title to or the ownership of the property. The Custodian may proceed to notify the property under sub-section (2) of section 4. He may also by a special order under sub-section(1) of section 6 assume control over the property. It is not necessary in this case to assume possessionof the property since, by reason of the requisitioning order, the possession is already with Government and the Deputy High Commissioner, United Kingdom, as already in occupation as Government's allottee. It would be open to Miss Jinnah or any person claiming right or interest in the property to prefer his or her claim to the Custodian under section 7 which has now been amended to include also the case of control. Since the property is already requisitioned, the compensation which will eventually be determined will have to be paid to the Custodian and the Custodian will hold that compensation in the manner provided in the Act.

3. The requisite drafts of the notification and order under section 4 and 6 are enclosed herewith.

Sd./- P.M.L.
25/6
Remembrancer of Legal Affairs.

U.O. to Rehabilitation Department No. 384-Genl.
dated the 25th June 1949.

BVV
4.6.56.

Legal Department.

In place of the draft Order at page 35 ante a revised draft order is sent herewith.

Sd./- J R.D.
13/8
Additional Secretary to Government.

U.R. No Rehabilitation Department, No. 817-Confl.,
dated the 13th August, 1949.

SVV
4.6.56.
G e.

Legal Department.

A model draft order is sent herewith.

As the name of the evacuee will have to be specified in the Order, the President of the Stock Exchange may be requested to include such information in every transaction the information of the which he has agreed to supply to the Custodian.

Sd./- J.R.D.
5/9
Additional Secretary to Government.

U.R. to Rehabilitation Department, No. 10044.
dated the 5th September, 1949.

SVV
4.6.56.
4 6.

Office of the Custodian of
Evacuee Property
Bombay, 1949.

O R D E R.

No. .- Whereas the shares specified in the Schedule hereto annexed belonging to an evacuee, have been sold to on 1949;

And Whereas an application under sub-section (2) of section 8 of the Bombay Evacuee (Administration of Property) Act, 1949 (Bom. XXIV of 1949), has been made by for confirming such sale;

Now, therefore, in exercise of the powers conferred under sub-section (5) of section 8 of the said Act, I hereby confirm the sale of the said shares (subject to the following conditions and terms).

X where it is applicable.

(Here state, if any, conditions or terms are imposed).

Schedule.

Dated the

Custodian,
Deputy Custodian
Asstt. Custodian.
of Evacuee Property.

SVV
5.6.56.
4 c.

Legal Department.

The first point raised is whether under section 7 of the Bombay Evacuees (Administration of Property) Act, 1949, an evacuee himself can appeal against an order passed under section 6 taking possession of the Property. Section 7 refers to any person who claims any rights to or interest in any property of which the Custodian or the Deputy Custodian has taken possession under section 6. He can first apply to the Custodian preferring his claim and then has a right to appeal to the court against the Custodian's order. Any person claiming any right to or interest in the property would include an Evacuee himself. If, however, the Provincial Government has made a declaration under the Explanation to sec.2(b) in respect of such person that he is an Evacuee, the decision of the Provincial Government shall be held to be final and a court will not ordinarily interfere with the decision. But in an appeal under section 7, a person can contend that he is not an Evacuee.

2. As regards the second point it is true that the order which is appealable to the Court is an order which has been made by the Custodian or the Deputy Custodian under sub-section (2) or (3) of section 7. Such an order can only be made on a claim petition under section 7(1). No appeal, therefore, lies to the Custodian against the Deputy Custodian's action in taking possession of the petitioner's property as Evacuee property. In paragraph 13 of the petition it is stated that the petitioner is not an Evacuee and that the question was raised before the Deputy Custodian. As the question whether the petitioner is an Evacuee has arisen, it will be competent to the Deputy Custodian to refer the question to the Provincial Government for decision.

Sd. J.R. Dhurandhar.
Additional Secretary to Government.

U.R. to Rehabilitation Department, No. 10877, dated the 28th September 1949.

SVV
5.6.56.

Legal Department.

Sub-section (1) of section 6 of the Administration of Evacuee Property Ordinance, 1949 empowers the Provincial Government to appoint for the province a custodian, and as many additional, deputy or assistant custodians of evacuee property as may be necessary for the purpose of discharging the duties imposed on the custodian by or under the Ordinance. Sub-section (3) of this section authorises the Provincial Government by general or special order to provide for the distribution of work among custodians. These provisions contemplate first the appointment of custodians for the Province and then an issue of a general or special order for the distribution of work among them. The Rehabilitation Department Notifications at pp, 3 to 9 ante which make the appointments of custodians areawise are not therefore in order. Two revised draft notifications, one for the appoitment of custodians for the Province by virtue of their office and another for the appointment of Mr. Deshmukh by name as Deputy Custodian are sent herewith. After the notifications are issued, Government should pass an order under sub-section (3) of section 6 of the Ordinance for distribution of work among the custodians. Under this provision it would be competent to make an order for the distribution of work among the custodians areawise as intended.

Sd./- J.R.D.
27/10
Additional Secretary to Government.

U.R. to Rehabilitation Department, No. 19088;
dated the 27th October, 1949.

SVV
5.6.86.

ORDER.

The Administration of Evacuee Property Ordinance, 1949.

Rehabilitation Department,

Bombay Castle, Bombay Nol 1; November 49.

No. .- In exercise of the powers conferred by subsection (3) of section 6 of the Administration of Evacuee Property Ordinance, 1949 (Ordinance No. XXVII of 1949), the Government of Bombay is pleased to direct that subjects to the provisions of sub-section (2) and (3) of section 6 of the said ~~Act~~ ordinance

(1) The Additional Custodian of Evacuee Property shall discharge the duties imposed on him by or under the said Ordinance within the area comprised in the City of Bombay and the Bombay Suburban District;

(2) All ex-officio Deputy Custodians of Evacuee Property, shall discharge the duties imposed upon them by or under the said Ordinance within their respective jurisdictions;

(3) Mr. R.V.Deshmukh, Deputy Custodian of Evacuee Property , shall discharge the duties imposed on him by or under the said Ordinance within the area comprised in the City of Bombay and the Bombay Suburban District under the general supervision and control of the Additional Custodian of Evacuee Property;

(4) All ex-officio Assistant Custodians of Evacuee Property, shall discharge the duties imposed upon them by or under the said Ordinance within their respective jurisdictions;

(5) Mr. Samuel Abraham, Mr. B.S. Nadkarni and Mr. A.H.Lagu, Assistant Custodians of Evacuees Property, shall discharge their duties imposed upon them by or under the said Ordinance within the areas comprised in the City of Bombay and the Bombay Suburban District.

By order of the Governor of Bombay,

SVV
5.6.56.

Joint Secretary to Government.

Legal Department.

A revised draft order as sent herewith subject to the following observations :-

(i) Subsection (2) of section 6 of the Administrationof Evacuee Property Ordinance 1949, in specific terms provides that all Custodians, Additional, Deputy or Assistant Custodians of Evacuee Property shall discharge the duties imposed upon themunder the general superintendence and control of the Custodian-General. This has been brought out in the draft order.

(ii) The object of the order is to allocate the work between different Officers. The draft portion 'A' on page 27 that "the Additional Custodian shall dispose of such other work as may by assigned to him etc." is vague. These words are therefore omitted from paragraph 1.

2. The order should be published in the Bombay Government Gazette so that the courts can take judicial notice thereof.

Sd./- J.R.D.
25/11
Additional Secretary to Government.

U.R. to Rehabilitation Department, No. 13589; dated the 26th November 1949

SVV
4.6.56.
4 c.

Legal Department.

The points raised by Joint Secretary, Rehabilitation Department are of hypothetical nature and it is difficult to answer them in definite terms. If any question of the nature specified in the note has arised in any particular case, the facts of the case together with the point for consideration should be clearly stated. In view of the difference between the Bombay Act and the Central Ordinance on several material points, the difficulty is greater in answering the questions of a general and hypothetical nature. It will be also necessary to peruse the rules made under the Central Ordinance. Such rules are intended to provide the period within which appeals are to be made under sections 34 and 35 of the Ordinance.

Sd./- J.R.D.
29/11
Additional Secretary to Government.

U.R. to Rehabilitation Department, No.13780;
dated the 30th November, 1949.

SVV
5.6.50.
4 c.